



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: OPRM-DR, FFL
TENANT: CNR

Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*.

The landlord's agents M.V.D.G. and J.A.Y. appeared at the date and time set for the hearing of this matter and spoke on behalf of the corporate landlord. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:35 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Further to this, as the tenant did not attend the hearing to present their evidence, the landlord was denied the opportunity to ask questions to rebut the tenant's submitted evidence. Therefore, I applied Rule 7.4 to address the tenant's submitted evidence. Rule 7.4 requires:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I find that in accordance with the principles of natural justice and Rule 7.4, I will not consider the tenant's submissions uploaded into evidence as the tenant did not present the evidence for cross-examination by the other party.

Accordingly, in the absence of any evidence or submissions from the tenant who was an applicant in one of the applications being heard at this hearing, I order the tenant's application dismissed without liberty to reapply.

The landlord confirmed that they had served the Notice of Dispute Resolution Proceeding for their application to the tenant by Canada Post registered mail on July 21, 2018 and the Amendment to their original Application to the tenant, also by Canada Post registered mail, on July 30, 2018. The landlord provided two separate Canada Post registered mail tracking numbers as proof of service for each package of documents. I have recorded these tracking numbers on the cover sheet of this decision. During the hearing, with the agreement of the landlord, I accessed the Canada Post website to check the tracking report for these packages. The Notice of Dispute Resolution package was indicated to have been accepted by the tenant on July 25, 2018 as the tenant's name was provided as the signatory for receipt of the package on the tracking report. The Amendment to the Application was indicated to be "unclaimed" by the tenant.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a

document is considered or 'deemed' received on the fifth day after mailing, if it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, I find that the tenant was served with the landlord's Notice of Dispute Resolution Proceeding package on July 25, 2018 and that the tenant was deemed served with the landlord's Amendment to the Application on August 4, 2018, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue – Amendment to Landlord's Application

As I have found that the tenant was served with the landlord's Amendment to the Application, and because the tenant continues to reside in the rental unit, I find that it is reasonable the tenant should be aware that he continues to be responsible for the payment of rent. Therefore, I accept the landlord's request to amend the original application to include claims for rent for July and August 2018. The landlord had also served the tenant with a second 10 Day Notice dated July 9, 2018, however, as I have accepted the landlord's amendment to the original application, I find it is no longer necessary to consider the second 10 Day Notice in this matter.

Preliminary Issue – Procedural Matters

As a procedural matter, I explained that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, I explained that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons

for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord be granted an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord submitted a written tenancy agreement into documentary evidence, and confirmed the following information pertaining the tenancy agreement. The tenancy began on August 1, 2016 as a one-year fixed-term tenancy. At the end of the fixed-term, the tenancy converted to a month-to-month tenancy. Monthly rent, due on the first of the month, was \$1,270.00, until rent was increased on August 1, 2018 to \$1,320.00 in accordance with the allowable rent increases pursuant to the *Act*. The tenant paid a security deposit of \$612.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord's agent M.V.D.G. testified that the tenant's June 2018 rent payment of \$1,270.00 was returned due to insufficient funds (NSF). The tenant did not make any attempts to pay the rent owing. Therefore, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) dated June 15, 2018 by posting it on the tenant's door on that same day. This was confirmed by the testimony provided by Witness C.S., the building manager who served the 10 Day Notice. An effective date for vacancy of the rental unit of June 28, 2018 was indicated on the 10 Day Notice. A copy of the landlord's 10 Day Notice was submitted into documentary evidence.

The landlord's agent M.V.D.G. testified that the tenant's subsequent direct debited rent payments have been returned NSF and therefore, the tenant has not paid any of the rent owing for June, July or August 2018, as of the date of this hearing.

The landlord is seeking a monetary award against the tenant for all outstanding rent owed, recovery of the bank-levied charges resulting from the tenant's returned rent payments due to NSF, administrative costs related to this application for registered mail, and the recovery of the filing fee for this application.

In summary, the landlord has claimed, as follows:

Item	Amount
Unpaid rent for June 2018	\$1,270.00
Unpaid rent for July 2018	\$1,270.00
Unpaid rent for August 2018	\$1,320.00
NSF charges (3 x \$25.00)	\$75.00
Postage costs for registered mail for this application	\$25.10
Filing fee for this application	\$100.00
Total Claimed by Landlord	<u><u>\$4,060.10</u></u>

Analysis

In considering this matter, I have reviewed the landlord's 10 Day Notice dated June 15, 2018 to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord's agent; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Based on the unchallenged testimony of the landlord regarding the terms of the tenancy agreement, I find that the tenant was obligated to pay monthly rent of \$1,270.00 for the months of June and July 2018, and \$1,320.00 for the month of August 2018, as established in their agreed upon tenancy agreement, and a result of allowable rent increases in accordance with the *Act*.

The landlord has also sought recovery of the NSF charges incurred due to the tenant, and the registered mail costs related to this application.

Section 7(1)(d) of the *Residential Tenancy Regulations* allows a landlord to charge a tenant “an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent”.

However, section 7(2) clarifies that:

A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

In the pages of the tenancy agreement submitted into evidence by the landlord, I do not find any confirmation of the cost of NSF charges to be paid by the tenant, therefore, I cannot find that the landlord is entitled to recover these costs.

Regarding the landlord's claim to recover the cost for registered mailing of documents to the tenant, I note that these are administrative costs associated with the preparation of the landlord's application for this hearing. Administrative costs associated with the preparation of an application are not recoverable. Therefore, I cannot find that the landlord is entitled to recover these costs.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$3,860.00 for unpaid rent owing for the months of June, July and August 2018.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to retain the tenant's security deposit of \$612.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord retain the tenant's entire security deposit of \$612.00 in partial satisfaction of the monetary award, and I issue a Monetary Order of \$3,348.00 in the landlord's favour for the remaining amount of the monetary award owing.

A summary of the monetary award is provided as follows:

Item	Amount
Amount of unpaid rent owing to the landlord as a monetary award	\$3,860.00

Landlord to retain security deposit in partial satisfaction of monetary award	(\$612.00)
Remaining amount of unpaid rent owing to the landlord	\$3,248.00
Recovery of filing fee for this Application	+ 100.00
Total Monetary Order in Favour of Landlord	\$3,348.00

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the \$612.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$3,860.00 for unpaid rent owing for the months of June, July and August 2018.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$3,348.00 in satisfaction of the remaining amount owing in unpaid rent, and to recover the landlord's filing fee for this application. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord is provided with these Orders in the above terms and the tenant must be served with these Orders as soon as possible.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 17, 2018

Residential Tenancy Branch